



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

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Order Instituting Rulemaking into) Rulemaking 99-11-022
Implementation of Pub. Util. Code § 390.) (Filed November 18, 1999)
)

**SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) RESPONSE TO
ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING
INFORMATION ON QUALIFYING FACILITIES**

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Dated: **March 7, 2008**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
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Order Instituting Rulemaking into Implementation of Pub. Util. Code § 390.)) Rulemaking 99-11-022
(Filed November 18, 1999)

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ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING
INFORMATION ON QUALIFYING FACILITIES**

Southern California Edison Company (“SCE”) submits the following response to the February 7, 2008 Administrative Law Judge’s Ruling Requesting Information on Qualifying Facilities (the “Ruling”).¹

This phase of this proceeding originated from a series of petitions and motions filed by SCE beginning in July 2000 to modify the “factor” and the natural gas indices used in SCE’s short-run avoided cost (“SRAC”) transition formula.² During the course of 2000, it became clear that various market participants were manipulating natural gas prices at the California border, resulting in SRAC energy payments to qualifying facilities (“QFs”) that substantially exceeded avoided cost. Among other things, SCE filed an emergency motion with the Commission on November 28, 2000 seeking modifications to the SRAC transition formula.³ The Commission did not act on SCE’s motion until March 27, 2001, when it issued D.01-03-067.⁴

¹ On February 22, 2008, Administrative Law Judge DeBerry granted SCE’s request to extend the date for responding to the Ruling to February 29, 2008. On February 28, 2008, Administrative Law Judge DeBerry granted SCE’s request to further extend the date for responding to the Ruling to March 7, 2008.

² See D.01-03-067 at 3.

³ This was, in fact, SCE’s *second* emergency motion. The Commission denied SCE’s first motion. See D.00-10-030.

⁴ See D.01-03-067.

D.01-03-067 adopted the modifications to the “factor” proposed by SCE and also revised the natural gas index in both the SCE and Pacific Gas and Electric Company (“PG&E”) SRAC transition formulas to eliminate any further reliance on the Southern California border indices for natural gas. D.01-03-067, however, adopted these modifications effective April 1, 2001 and refused to address the substantial overpayments incurred prior to April 2001.

SCE timely appealed D.01-03-067’s refusal to consider relief for overpayments prior to April 2001. On review, the Court of Appeal held that the Commission erred in refusing to consider whether the modifications to the SRAC transition formula should be applied retroactively as of the date SCE filed the second emergency motion.⁵ The Court of Appeal remanded the matter to the Commission on September 4, 2002 with specific directions to examine SRAC transition formula prices from December 2000 through March 2001 (the “Remand Period”):

It may be that the evidence will show the SRAC prices were correct for the period of December 2000 through March of 2001. If the Commission makes this determination and it is based upon substantial evidence, that will end the matter. However, if the evidence shows that the formula in Decision No. 01-03-067 should have been applied retroactively to arrive at a more accurate SRAC, then it is the Commission’s duty to apply it retroactively. The Commission does not have the power to thwart Congressional intent by having a policy inconsistent with that set forth in PURPA.⁶

It has now been over five years since this matter was remanded to the Commission, and the Commission still has not made the determination mandated by the Court of Appeal.

⁵ See *S. Cal. Edison Co. v. P.U.C.*, 101 Cal. App. 4th 982, 997-99 (2002), *reh’g denied*, 2002 Cal. App. LEXIS 4728 (2002), *review denied*, 2002 Cal. LEXIS 8129 (2002).

⁶ *Id.* at 999.

For many years, it has been beyond dispute that the natural gas indices the utilities used to calculate SRAC energy payments to QFs were manipulated and inflated during the Remand Period. The Federal Energy Regulatory Commission (FERC) conducted an exhaustive study of market prices during the California energy crisis and concluded that “the California electric market structure and rules for wholesale spot power sales of electric energy were seriously flawed and . . . along with other factors, . . . caused ***unjust and unreasonable rates*** in the California Power Exchange (PX) and CAISO spot markets.”⁷

“To remedy this, [FERC] held that prices for the period October 2, 2000 through June 20, 2001 ***must be reset to just and reasonable levels.***”⁸ FERC adopted a mitigated market clearing price (MMCP) that represent the maximum just and reasonable rate during that period and ruled that any excess over the MMCP would be refunded to buyers.⁹ “The formula to determine the MMCP is based on the marginal cost of the last unit dispatch to the meet the load of the [CAISO] in its real time market in each hour for the refund period. For the purpose of identifying the gas price portion of the formula, ***[FERC] originally relied on published natural gas spot prices but later concluded that the prices established in the California gas spot market were unreliable, and [FERC] modified the MMCP formula to use natural gas producing-area prices plus a tariff rate transportation allowance.***”¹⁰ As SCE has previously explained in this proceeding, posted SRAC prices during the Remand Period substantially exceeded *both* avoided cost *and* the MMCP – which is the maximum just and reasonable rate during that period.¹¹

⁷ See *San Diego Gas & Elec. Co. et al.*, 108 FERC ¶ 61,311 (2004) (*emphasis added*).

⁸ *Id.* (*emphasis added*).

⁹ See *San Diego Gas & Elec. Co. et al.*, 102 FERC ¶ 61,317 (2003).

¹⁰ See *San Diego Gas & Elec. Co. et al.*, 108 FERC ¶ 61,311 (*emphasis added*).

¹¹ See *Comments of PG&E, SCE, The Utility Reform Network, and the Office of Ratepayer Advocates on the Draft Decision of Commissioner Peevey*, R.99-11-022, at 4-5 (filed Mar. 21, 2005).

In accordance with the Ruling, **Attachment A** lists the name, address, dedicated online capacity and total energy deliveries during the Remand Period for each SCE QF that has not otherwise resolved the Remand Dispute. These nineteen QFs had energy deliveries during the Remand Period ranging from as little as 12 kWh to nearly 30 million kWh. Based on the record in this proceeding, the Commission should order retroactive adjustments to the SRAC payments made to these QFs during the Remand Period. In light of the broad range of energy deliveries at issue in this proceeding, the Commission should set a prehearing conference to develop an appropriate process for implementing the retroactive adjustments.

Respectfully submitted,

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Dated: March 7, 2008

ATTACHMENT A

Project ID	Name	Address	Dedicated Online Capacity (MW)	Energy Deliveries Dec-00 — Mar-01 (kWh)
2045	TIN Inc. dba Temple-Inland	5100 E. Jurupa St. Ontario, CA 91761	36.7000	29,776,829
2155	Chevron USA	324 W. El Segundo Boulevard El Segundo, CA 90245	-	14,887,471
2101	ExxonMobil Production Company	800 Bell St., Rm. CORP-EMB 3903K Houston, TX 77002-2180	-	922,919
2430	DCOR, LLC	1221 Lamar, Suite 1600 Houston, TX 77010	1,4000	768,155
4031	Richard Moss	1049 Cinnamon Ranch Road Hammill Valley, CA 93514	0.1550	77,693
2085	Episcopal Home	1428 S. Marengo Ave Alhambra, CA 91803	-	3,646
2269	Vanguard Energy Systems	P. O. Box 624 Sunset Beach, CA 90742	-	2,520
2311	Azusa Unified School District	546 S. Citrus Avenue Azusa, CA 91702	-	1,760
2411	Hueneme High School	309 S. "K" St Oxnard, CA 93030	-	960
2348	Simmax Energy LLC - St. Joseph Hospital	2464 E. Ojai Avenue Ojai, CA 93023	-	960
6128	Horton, John W.	47716 Fairview Newberry Springs, CA 92365	0.0250	758
2258	Vanguard Energy Systems	P. O. Box 624 Sunset Beach, CA 90742	-	480
4147	Monte Vista Water District	10575 Central Avenue Montclair, CA 91763	0.8650	120
6136	S & L Ranch	2889 Selby Avenue Los Angeles, CA 90064	-	87
2366	Omni Metal Finishing	11685 Coley River Road Fountain Valley, CA 92708	-	28
4137	American Energy, Inc. (Fullerton Hydro)	5242 Bolsa Avenue, Suite 3 Huntington Beach, CA 92647	0.3400	24
4150	Water Facilities Authority	1775 N. Benson Avenue Upland, CA 91784	0.2240	23
4034	Central Hydroelectric Corp.	10050 Bandley Drive Cupertino, CA 95014-2188	11.9500	14
4076	Camrosa County Water District	7385 E. Santa Rosa Road Camarillo, CA 93012	0.1500	12
Count	19	Totals	51,8090	46,444,459

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of **SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) RESPONSE TO ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING INFORMATION ON QUALIFYING FACILITIES** on all parties identified on the attached service list(s). Service was effected by one or more means indicated below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this **7th day of March, 2008**, at Rosemead, California.

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